

DIVISION I

CA05-1217

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

September 20, 2006

DEXTER A. FLENORY
APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F009923]

V.

KLIPSCH LLC; Wausau Business
Insurance Co.
APPELLEES

AFFIRMED

Appellant, Dexter A. Flenory, appeals from the decision of the Arkansas Workers' Compensation Commission denying his claim for additional permanent partial disability benefits. On appeal, he argues that the Commission erred in finding that he was not entitled to wage-loss benefits. We affirm the Commission's decision.

At the outset, we note that in reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and when a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, ___ S.W.3d ___ (2005).

As noted in the opinion of the administrative law judge (ALJ), which was adopted by the Commission, appellant sustained a compensable injury to his neck on March 26, 1999. On November 17, 2000, he underwent surgery at C4-5 and C5-6. His treating physician assigned him a ten percent permanent impairment rating, opined that he reached maximum medical improvement as of March 1, 2001, and concluded that appellant was employable because there was no objective basis for appellant's continued complaints. Appellees paid benefits associated with the permanent impairment rating. Appellant subsequently sought wage-loss benefits.

At an August 20, 2004, hearing, appellant testified that he was unable to work because he continued to suffer from a number of complaints that he attributed to the injury. Appellant, however, admitted that after his surgery he was capable of driving and performing household chores such as washing dishes, sweeping, and laundry. Appellant stated that he could read, write, perform simple math, use a computer, and engage in woodworking such as building tables, gun cabinets, shelves, and clocks. Further, appellant stated that he had a high-school education and that he was forty-eight years old at the time of the hearing. Appellant also admitted that he had not applied for any type of employment and that no doctor had placed any limitations or restrictions on what he could do.

The ALJ found that he was not entitled to wage-loss benefits. Among other findings, the ALJ found that appellant had no work restrictions, was capable of performing his hobby of light carpentry, and had not attempted to return to work. Appellant appealed the decision

to the Commission, which adopted the ALJ's decision. Appellant now appeals from the Commission's decision.

Our workers' compensation statutes provide that "[i]n considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity." Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002). Pursuant to this statute, when a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission may increase the disability rating based upon wage-loss factors, which consider the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Lee, supra*. The Commission determines disability based upon medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Id.* Further, the Commission may also consider the claimant's motivation to return to work, since a lack of interest or a negative attitude impedes assessment of the claimant's loss of earning capacity. *Id.*

Here, the Commission considered appellant's lack of work restrictions and his ability to perform certain tasks. We also note that appellant is not elderly, has a high-school education, and reads, writes, and has math skills. Further, his treating physician found no objective basis for his complaints and stated that he was employable. Given this evidence,

we conclude that there was a substantial basis for the denial of wage-loss benefits.

NEAL and VAUGHT, JJ., agree.